

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6107**

**PETITION OF MARK LEAS**  
(Hearing held November 16, 2005)

**OPINION OF THE BOARD**  
(Effective date of Opinion, December 15, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioner proposes the construction of a new single-family dwelling that requires a variance of 80.70 feet as it is within 30.20 feet of the established front building line. The required established building line is 110.88 feet.

Curt Schreffler of Case Engineering, appeared with the petitioner at the public hearing. John Fenton, President of the Glen Echo Heights Homeowners Association, also appeared at the public hearing.

The subject property is Lot 22, Block 22, Glen Echo Heights Subdivision, located at 6217 Winnebago Road, Bethesda, Maryland, 20816, in the R-90 Zone (Tax Account No. 0700504872).

Decision of the Board: Requested variance **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes the demolition of the existing house and the construction of a new single-family dwelling.
2. Mr. Schreffler testified that the existing house is currently located in the established building line setback and that the new house will be wider and deeper, but will not be located any closer to the street than the existing house. Mr. Schreffler testified that the proposed construction could not be located deeper into the lot because of the severely sloped rear yard. Mr. Schreffler testified that the topography of the rear yard has a slope of 38% and that the master plan for this area of the County calls for the preservation of the steeply sloped and wooded areas as defined as being 25 percent and greater. See, Exhibit No. 5(a) [established building line calculation].

3. Mr. Schreffler testified that a stream runs through the front yards of the lots used in the calculation of the established building line [Lots 19, 30, 31], and through the rear yard of the petitioner's property. Mr. Schreffler testified that the houses on Lots 19, 30 and 31 are sited deep within those lots because of the location of the stream and that several of the properties have a bridge across the stream to provide access to the residence. Mr. Schreffler testified that new construction on the subject property must meet an established building line and a 25-foot stream conservation setback and that these requirements, coupled with the lot's topography, severely restrict the property's buildable envelope. See, Exhibit No. 13 [rendered site plan].
4. Mr. Fenton testified that the Association supports the variance request because locating the house elsewhere on the property would be detrimental to the existing trees. Mr. Fenton testified that an association request would be to be to preserve the 100-year-old oak tree located on the property. The petitioner, in response to the association's request, testified that he had spoken with an arborist concerning the 100-year-old oak tree, and had been advised that the root system for the tree had been compromised several years ago by the construction of a retaining wall built on an adjoining property.

### **FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The subject property has an existing house currently located in the front yard setback. The new house will be rebuilt at the same location as the existing house. The property has a stream that runs through rear yard of the property. The topography in the rear yard of the subject property has a slope of 38%, which exceeds the slope discussed in the master plan as requiring protection. The proposed construction must meet an established building line requirement to be located at the same site as the existing house. The property is also subject to a stream conservation setback. The Board finds that these are exceptional conditions peculiar to the subject property which severely constrain the buildable area on

the property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owner.

*(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the construction of a new single-family dwelling is the minimum reasonably necessary.

*(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the variance request will continue the residential use of the property and that the variance is in harmony with the master plan, which states “preservation of steeply sloped areas of 25 percent and greater by strict adherence to the criteria established in the ‘Staff Guidelines for the protection of Slopes and Stream Valleys,’ prepared by the Montgomery County Planning Department staff (April 1983)” (pg69).

*(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 80.70 feet from the required 110.88 established front building line for the construction of a new single-family dwelling is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of their witness, to the extent that such evidence and representations are identified in the Board’s Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 5(a) through 5(e) [established building line calculation and elevations] and 13 [rendered site plan].

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Wendell M. Holloway, with Donna L. Barron, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 15th day of December, 2005.

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Katherine Freeman  
Executive Director

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.